IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 329 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NILESH @ NIRAJ HANSRAJBHAI KASUNDARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1,3

MR PARESH UPADHYAY for Respondent No. 1

..... for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 24.12.2003. By the impugned order, the petitioner-detenu is detained as a 'dangerous person' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short).

Along with the detention order, the detenu was also served with the grounds of detention. In the grounds of detention, it is alleged against the petitioner that he has involved himself in six criminal cases. Particulars of the same are given in the detention order. The said six cases are filed against the petitioner under Section 379 of the Indian Penal Code, as he has tried to commit theft of motor cycles, viz., Hero Honda. The authority, after having been satisfied about the alleged illegal activities of the petitioner and after recording the statements of witnesses, whose names have not been disclosed, detained him under PASA.

The learned Advocate for the petitioner submitted that the cases against the petitioner are all registered cases and they are all theft cases. He submitted that assuming that the petitioner has committed theft of some vehicles, that itself is not enough to attract the order under preventive detention, as, such cases can be said to be cases in connection with law and order situation and it cannot be said that the petitioner has committed breach of any public order. He submitted that so far as the so-called statements of witnesses are concerned, they are all in connection with the so-called vehicle theft on the part of the petitioner. It is submitted that the authority has committed an error in invoking the provisions of PASA against the petitioner, by which he is detained under preventive detention.

It is, no doubt, true that so far as vehicle theft cases are concerned, the petitioner is already subjected to criminal complaint under Section 379 of IPC. The learned Advocate for the petitioner has relied on a Division Bench decision of this Court in Special Civil Application No.1681 of 1992, rendered on 3rd March, 1993. In the said decision, the detenu was subjected to 19 criminal cases under various provisions of IPC. The Division Bench of this Court has observed as under in paragraphs 5 and 6 :-

" ... ...

"5. Learned counsel for the

petitioner submits that the activities alleged against the petitioner would affect only maintenance of law and order and not public order. In her submission the detaining authority has lost sight of the distinction between the concept of 'law and order' and that of 'public order'. In this connection reference may be made to a decision of the Supreme Court in the case of Harpreet Kaur vs. State of Maharashtra, reported in AIR 1992 SC 979. After referring to its earlier decisions, in para 14 of the judgement the Supreme Court has observed as follows :

"From the law laid down by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity

of an order of detention."

Again in para 17 of the judgement the Supreme Court has observed that in each case the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether the activities are prejudicial to maintenance of 'public order' or only 'law and order'.

6. Having regard to the aforesaid principles law laid down by the Supreme Court, in the instant case the court is required to scrutinise as to whether the activities alleged against the petitioner-detenu would affect maintenance of 'law and order' or maintenance of 'public order'. Be it noted that out of 19 cases registered against the petitioner, none of the criminal cases has been tried so far. All the cases are pending before the court. In 14 cases the allegation is of theft of gas cylinders. In one case the allegation of theft of V.C.R, and in two cases the allegation is of theft of colour T.V. In one case it is alleged that a motor cycle is stollen and in another case silver ornaments and wrist watch are alleged to have been stollen. In all cases the detenu is alleged to have been in the offence of theft and other allied offences. By the very nature of the offences it would be difficult to say that these offences would affect the even tempo of public life. In 14 offences gas cylinders have been stollen. Of course this activity as alleged is repetitive in nature. But it is difficult to say that the extent and reach of the offence is such that it would create problem of maintenance of 'public order'. Similar is the position with regard to other five cases. As far as the statements of four witnesses are concerned, they refer to two separate incidents one is alleged to have taken place on June 1, 1992 at about 9.00 p.m. It has happened on account of non-payment of price of eatables taken from a hotel.

> Another incident is alleged to have taken placed on June 3, 1992 which is alleged to have taken place at about 3.00 p.m. on June 3, 1992, and the cause of the same is also non-payment of price of pan. Both these incidents at the most affect individuals and not the society at large. Applying the aforesaid principle laid down by the Supreme Court to the facts and circumstances of this case it is difficult to say that the detaining authority was justified in arriving at the satisfaction that the activities of the petitioner detenu were likely to adversely affect maintenance of 'public order'. All these activities either taken singly or cumulatively may at the most create some law and order problem. In this view of the matter the satisfaction arrived at by the detaining authority cannot be said to be genuine and it stands vitiated. Therefore, the petition is required to be allowed."

... ..."

Considering the aforesaid aspect, since these are individual theft cases, it cannot be said that any public order can be said to have been breached by the petitioner by the aforesaid offence. The learned Advocate for the petitioner submitted that if the petitioner is found to be indulging in this activity repeatedly, it is always open for the prosecuting agency to request the Court to cancel the bail, as, usually bail is granted on certain conditions, breach of which would entail cancellation of bail. However, this aspect can be considered by the prosecuting agency which is in charge of the criminal cases. So far as the present case is concerned, the order of detention is required to be quashed on the ground that the activities of the petitioner cannot be said to be such that they violate public order, because these are individual theft cases, and the said aspect can be considered as a breach of law and order on the part of the petitioner.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

July 6, 2004 (P.B. Majmudar, J.)

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(apj)